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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,181	06/20/2003	Paul Eugene Thomas	15838-243002	9696

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EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/600,181	THOMAS ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-40 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-40 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 25 August 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 6/20/03.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgement is made of Applicant's claim for priority for this application as a continuation of Application No. 09/668,649, filed September 22, 2000.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on June 20, 2003 was filed simultaneously with the application. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claims 13-15, and 26-28 are objected to because of the following informalities: the phrase "in greater than" in each of these claims is believed to be a typographical error. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 19-29 of U.S. Patent No. 6,610,904. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

With respect to **Claims 1, 2, 4-18, and 20-36:** In essence the Applicant has received a patent for a species or a more specific embodiment, and thus he is not entitled to a patent for the generic or broader invention without maintaining common ownership and ensuring that the term of the latter issued patent will expire at the end of the original term of the earlier issued patent. This is because the more specific "anticipates" the broader.

With respect to **Claim 3:** Claim 3 of the above cited Patent states "said raised ridge runs in a lateral direction" while Applicant states "said raised ridge runs in a longitudinal direction". It would be obvious to modify Claim 3 of the above cited Patent to have

ridges that run longitudinally, as that is the longer dimension of the absorbent core of the article disclosed by Applicant and would allow more ridges to be manufactured within the core when compared to an embodiment with lateral ridges and thus would make more efficient use of the volume of the absorbent core.

With respect to **Claim 19:** Since Claim 16 (the claim that Claim 19 depends upon), and Claim 1 of this application have been rejected as not being patentably distinct from Claims 15 and 1, respectively, in the Patent cited above, Claim 19 is rejected as it would be obvious to someone of ordinary skill in the art that if the total void volume is greater than 1,000 cm^3 as set forth in Claim 15 of this application and said void volume space is on the female side of the acquisition distribution layer as set forth in Clam 16 of this application, then the void volume on the female side is greater than 1,000 cm^3.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 37, 38 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis et al (U.S. Patent No. 6,603,052).

With respect to **Claims 37 and 38:** Davis teaches an apertured film 20 (Fig. 1) that overlays an absorbent layer 14 with absorbent core material (Fig. 1) and that is arranged in a pattern containing apertures 22 (Fig. 2) that wick exudates away from the top layer 12 to the absorbent layer 14. These apertures extend downward from the surface 24 of the top layer 12 toward the absorbent layer, a configuration that is identical to placing such apertures of a film on the male side of the distribution layer disclosed by Applicant. Davis teaches that the top layer is bonded to the absorbent layer at the apices of the apertures, creating a series of flow channels on the surface of the absorbent layer. The apertures form pillar structures between the top layer and absorbent layer that divert and slow fluid on the absorbent layer to increase the absorbency of the layer. Davis teaches that this diversion is a one-way capillary action, the speed of which varies throughout the absorbent core due to the variation in size and absorbency of absorbent material fibers throughout the layer 14, and once a fiber is saturated, the flow of exudates continues across the top surface 24 to other unsaturated areas.

With respect to **Claim 40:** Davis teaches apertures extending from a top surface 24 of an apertured film 22 that have apices adjacent an absorbent layer 14 (Fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al (U.S. Patent No. 6,603,052).

With respect to **Claim 39:** Davis teaches the direction of a flow of exudate in a surgical absorbent article through a plastic three-dimensional apertured film. He teaches that

this article may be used as a surgical drape and with the aid of the three dimensional apertured film, it is operable for absorbing a large amount of fluid even while angled steeply with respect to a ground surface (Col. 3, lines 30-36). It is obvious, since the three-dimensional film is what enables this absorption even at an angle, to add additional layers of the apertured film for increased absorption since the article may conform to the body of the user or move so as to be positioned at an angle with respect to the body surface of the user during use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

Larry I. Schwartz
Supervisory Patent Examiner
Group 3700